IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 909 of 1995

For Approval and Signature:

Hon'ble ACTING CHIEF JUSTICE MR.JN BHATT
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARAYANBHAI PANNABHAI SOLANKI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 909 of 1995

MR G RAMAKRISHNAN for Petitioner No. 1

MR PR ABICHANDANI, ADDL.PUBLIC PROSECUTOR for Respondent No. 1

CORAM : ACTING CHIEF JUSTICE MR.JN BHATT
and
MR.JUSTICE A.L.DAVE

Date of decision: 01/08/2003

ORAL JUDGEMENT

(Per : MR JUSTICE A.L. DAVE)

This appeal arises out of a judgement and order rendered by Additional Sessions Judge, Sabarkantha at Himmatnagar, on 12th September, 1995, in Sessions Case No.20 of 1994. The appellant was the accused before the Sessions Court and was tried for offences punishable under Sections 366, 376, 302, 201 and 363 of Indian Penal Code. He came to be convicted for offences punishable under Sections 302, 201 and 363 of IPC. He was ordered to undergo imprisonment for life and to pay a fine of Rs. 200/- and in default to undergo simple imprisonment for one month, for the offence punishable under Section 302 of IPC. He was ordered to undergo rigorous imprisonment for 2 years and to pay a fine of Rs. 200/-, in default to undergo simple imprisonment for one month, for the offences punishable under Section 201 of IPC, and was also ordered to undergo rigorous imprisonment for 5 years and to pay fine of Rs. 200/-, in default to undergo simple imprisonment for one month, for offence punishable under Section 363 of IPC.

2. The case against the appellant was that he had kidnapped his niece Rekha aged about 17 on August 6, 1993; they both were found to be missing from that date; after some time the appellant was apprehended and interrogated by the father and grand-father of the victim when he is said to have admitted that he had ravished and murdered Rekha and had thrown her dead-body in a ditch. He even indicated the place where the dead-body was lying and that is how the dead body was recovered. After the arrest of the accused, panchnama was drawn and it is found that he had a nail mark injury on his shoulder. The deceased was strangulated with the help of a rope used for reigning bullock, which he had purchased from one Rajak Gafur, who has been examined as a witness. In recent past of the approximate time of death of the deceased Rekha, accused and Rekha were seen together by Rupaji Athelaji, who has been examined at Ex.14. A complaint was lodged in respect of Rekha's missing and an offence was registered. On investigation, the Police found that there was evidence to connect the accused with the offence and therefore, charge-sheet came to be filed before Judicial Magistrate First Class, Khedbrahma, who in turn committed the case to the Court of Sessions as the offences were triable exclusively by Court of Sessions. That is how Sessions Case No. 20 of 1994 came to be registered. Charge was framed against the accused at Ex.5. The accused pleaded not guilty to the charge and was therefore, tried.

3. Considering the evidence on record, learned

Additional Sessions Judge, Sabarkantha at Himmatnagar came to a conclusion that offences punishable under Sections 302, 201 and 363 came to be established by the prosecution. However, the offences punishable under Sections 366 and 376 were held to have been not proved by the prosecution against the accused and the learned Additional Sessions Judge therefore, recorded acquittal in respect of those two offences.

4. Being aggrieved by the conviction and sentence awarded by the trial Court, the original accused has preferred this appeal. For the sake of convenience, he would be addressed as the accused in this judgement.

5. It appears that Criminal Appeal Nos. 1141 of 1995 and 1142 of 1995 came to be preferred by the State against the acquittal as well as for enhancement of sentence, which have been dismissed by earlier orders of this Court.

6. We have heard learned Advocate Mr. G. Ramakrishnan for the appellant - accused and learned Additional Public Prosecutor Mr. P.R. Abichandani for the State. We have the record and proceedings before us, through which we have been taken by both the sides.

6.1 It is amply clear from reading of the record and proceedings that here is a case where the prosecution has adduced only circumstantial evidence and no direct evidence was available. The defence story is that the accused and the victim Rekha were in love and he had no reason to commit murder of Rekha as he could as well have abandoned the relationship. The accused was, at the relevant time, young man of 22 years and has no criminal antecedents. The defence case is that the circumstantial evidence relied upon by the trial Court are not sufficient to establish an unbroken chain to connect the accused with the crime, and the conviction is therefore wrongly recorded. Learned Advocate Mr. Ramakrishnan has taken us through the record and proceedings thread bear. His case is that the person from whom the accused is alleged to have purchased the rope has not supported the prosecution case. The only evidence now left is that of Rupaji Athelaji, P.W 5, Ex.14, who claims to have seen the appellant and the deceased in recent past of the incident. He submitted that this is not sufficient to connect the accused with the crime and the appeal may therefore be allowed.

7. Learned Additional Public Prosecutor on the other hand has drawn attention to the fact that after the

arrest, the accused himself had discovered the dead-body; when he was arrested there were marks of injury on his person; that he has made extra-judicial confession before Ramaji Dhulaji, P.W.8, Ex.21 and this extra-judicial confession has not been retracted at all by the accused, and coupled with this is the fact that Rupaji had noticed accused and deceased Rekha together soon before the incident and had offered meals to both of them. Mr. Abichandani submitted that it is true that Rajak Gafur had not supported the prosecution case, but he has been cross-examined by the prosecution and his version has been proved through the deposition of the Investigating Officer. Mr. Abichandani submitted that the factum of admission on the part of the accused that he and deceased Rekha had an affair, they were found missing from 6.8.1993, the accused being not available till he was apprehended, followed by the factum of the accused showing the place where the dead body was lying and his unretracted extra-judicial confession conclusively clinched the accused with the crime and therefore his appeal may be dismissed.

8. We have given a close look to the evidence on record. The complaint was lodged by father of the deceased - Solanki Jivaji Ramji, who has been examined at Ex. 8. It is not in dispute that Rekha was born on 1.6.1976. He says that Rekha was missing from 6th August, 1993 about which he had informed Police on 8th August, 1993 through his cousin Chhagan and thereafter they had started searching her. Despite all efforts when Rekha could not found out, he lodged complaint on 10th August, 1993 before Vijaynagar Police Station. The complaint is at Ex.9. The search was launched, his brother Maganji and others got information that the accused is at Baroti at his aunt's place and therefore they went there and on seeing them, the accused ran away. As per deposition of Ramj, grand-father of Rekha, while they were searching for Rekha they went to Baroti on information that accused is there and accused ran away. Thereafter, Jivaji and Mithaji went to village Deri, they then noticed accused at village Godavri in a bus. They therefore apprehended him and on interrogation, the accused revealed that Rekha is at the house of Rupaji at Vishweshwar. They therefore went there to find that Rekha was not there and on being further interrogated, accused stated that he had murdered Rekha and has thrown the dead-body in a culvert near Vishweshwar. He also said that he had strangulated her with the help of a rope used for reigning bullock. The accused was then handed over to the Police.

9. When the accused was arrested by Police, a panchnama was drawn and he was sent for medical examination. The doctor has noticed a vertical nail abrasion on the left shoulder region of the size of 3cm x 1 cm. The doctor opined that the injury was possibly caused by nail. This was done on 21st August, 1993.

10. The medical evidence regarding the dead-body is that the postmortem was performed on 21st August, 1993 at about 10.00 A.M and there was a transverse reddish soft ligature mark about 1/2 inch broad, encircling the neck and passing over the thyroid cartilage and trachea. Fracture of the larynx and trachea and injury to the muscle of the neck were also noticed. Vertical abrasion of the size of 5cm x 3cm on both the heel region was also noticed. The doctor has opined that the injury has occurred about 120 to 125 hours prior to Post Mortem, that would be about 5 days prior to post-mortem. The doctor also noticed that there was fracture of the thyroid cartilage and the eyes, mouth, tongue and nose of the deceased was eaten away by maggots and flies. It would be appropriate at this stage to state that the doctor did not find indication of any rape. Dr. Narendra Pande, P.W 7 in his deposition at Ex.16 said that the strangulation was homicidal and possible with the rope that was found beside the deadbody and recovered through a panchnama. He also opined that the injury found on the accused was about 5 days old and that the death must have occurred about 5 days prior to the postmortem i.e. on 21st August, 1993.

11. Witness Rupaji Athelaji Ex.14 says that he stays at Visheshwar. The accused and a girl had gone to his house; the girl was feeling hungry and therefore he had offered meal to them and they stayed over the night in the veranda and left on the next day after taking meal. This witness has been cross-examined, but nothing turns on it, on the contrary, this witness seems to be a witness of truth. Thus, a totally disinterested, unbiased and independent person establishes the factum of last seen together.

12. Witness Rajak Gafur of village Choriwad has been examined at Ex.15. He is examined to establish that accused had purchased the rope from him. He has however, not supported the prosecution case and has been declared hostile. He denies to have stated before the Police that the accused had visited his shop on 15th August, 1993 at about 12.00 noon and had purchased the rope for Rs. 3.50 paise. However, through the deposition of the Investigating Officer this contradiction has been proved

by the prosecution. P.I. Bachubhai Thavraji Baranda has been examined at Ex.33. He says that the accused was apprehended on August 20, 1993 and was produced before him. He says that he had recorded statement of Rajak Gafur, who had stated that this man (accused) had gone to the shop on August 15, 1993 at about 12.00 noon and had purchased the rope for Rs. 3.50. The factum of the accused having discovered the dead-body is also established by the prosecution through depositions of Babulal Nathaji Ex.22 and the Investigating Officer.

13. We find that the evidence led by the prosecution establishes strong and unbroken chain of circumstances to link the accused with the crime. The accused and the girl go missing from 6th August, 1993; despite search none of them is to be found; therefore complaint is lodged on 10th August, 1993; the search is still on, and on 20th August, 1993, accused is apprehended by the relative of the deceased and produced before the Police. Police thereafter registered the offence and arrested him. At the time of the arrest, accused is found to have an injury on his person, which is about 5 days old, and the doctor who has examined him confirmed in his deposition that injury could be possible by nail. Before production before the Police, on interrogation the accused confessed to have committed murder of the deceased, which has remained unretracted. After the arrest by the Police, he discovers the dead-body, which has injuries indicative of homicidal strangulation. The injury on his person are indicative of struggle by the deceased at the time of asphyxia. The investigation also reveals that the accused , along with deceased Rekha was noticed by Rupaji and thereafter by Rajak Gafur on 15th August, 1993, when he purchased the rope. Though Rajak Gafur does not support the prosecution case, his original version is established by the Investigating Officer. The injury on person of the accused is found to be about 5 days old from 21st August, 1993, when he was examined by the doctor. On 21st August, 1993, the doctor has performed postmortem on the deadbody of Rekha and opined that her death was occurred about 5 days prior to the postmortem.

14. Besides above chain of circumstances, other factors which need to be taken note of are that the accused has not been able to explain his absence from 6th August, 1993 till 20th August, 1993, the day on which he was apprehended. He does not explain his injury and he does not retract his extra-judicial confession.

15. In our opinion, therefore, learned Additional

Sessions Judge has rightly appreciated the evidence on record and has followed the established canons of appreciation of evidence. We do not find any merit in this appeal calling for any interference with the finding of the trial Court. We have gone through the judgement of the learned Additional Sessions Judge and find that reasonings adopted and conclusions arrived at by the learned Additional Sessions Judge are just, legal and proper and we are in agreement with the same. The appeal therefore must fail. It is therefore dismissed. The conviction and sentence awarded by the learned Additional Sessions Judge, Sabarkantha at Himmatnagar in Sessions Case No. 20 of 1994 is hereby confirmed.

(J.N.Bhatt, Acting C.J.) (A.L.Dave, J.)

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